

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 06 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

JOHNATHAN JAMES WISE,

Petitioner - Appellant,

v.

RICHARD MORGAN, Superintendent,
WSP,

Respondent - Appellee.

No. 05-35322

D.C. No. CV-04-01648-MJP

MEMORANDUM *

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

Washington state prisoner Jonathan James Wise appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 petition for failure to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

exhaust state remedies. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Because at the time Wise filed the instant petition his claims were still pending review in the Washington Court of Appeals and had not yet been presented to the Washington Supreme Court, this federal habeas petition was clearly premature, and was properly dismissed without prejudice by the district court for failure to exhaust state remedies. *See Davis v. Silva*, 511 F.3d 1005, 1008 (9th Cir. 2008).

Wise contends the district court erred by dismissing his § 2254 petition for failure to exhaust his state remedies, because the failure to do so was excused by the state court's delay in addressing his petition for post-conviction relief. We reject this contention, however, because any delay in the proceedings in the state court did not render the available state corrective process ineffective. *See Coe v. Thurman*, 922 F.2d 528, 530-31 (9th Cir. 1990); 28 U.S.C. § 2254(b)(1)(B).

Wise's request for the names of the judges assigned to this appeal is denied as moot.

AFFIRMED.